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VIA FOIA ONLINE

Regional Freedom of Information Officer
U.S. EPA, Region 1 (OARM01-6)
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RE: FOIA Request Regarding Legal and Technical Basis for Claim That It Is Unlawful for MS4 Dischargers to Cause or Contribute to Excursion of Water Quality Standard

To Whom This May Concern:

This is a request for public records pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, as implemented by the Environmental Protection Agency ("EPA") at 40 C.F.R. Part 2.

Background

EPA Region I has approved and issued MS4 General Permits that include a provision that on MS4 discharges may not cause or contribute to an excursion of a water quality standard (*see, e.g.,* Final 2017 New Hampshire Small MS4 General Permit at 17: "Pursuant to Clean Water Act 402(p)(3)(B)(iii), this permit includes provisions to ensure that discharges from the permittee's small MS4 do not cause or contribute to an exceedance of water quality standards, in addition to requirements to reduce the discharge of pollutants to the maximum extent practicable. [...] The permittee shall reduce the discharge of pollutants such that discharges from the MS4 do not cause or contribute to an exceedance of water quality standards."¹). EPA has also asserted that it is unlawful and in violation of the Clean Water Act for an MS4 discharge to cause or contribute to an excursion of a water quality standard, even at extremely low quantities (*see, e.g.,* EPA Response to Comments on: National Pollutant Discharge Elimination System (NPDES) General Permits for Stormwater Discharges from Small Municipal Separate Storm Sewer Systems in

¹ Available at <https://www3.epa.gov/region1/npdes/stormwater/nh/2017-small-ms4-general-permit-nh.pdf>

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New Hampshire at 73, 82²). EPA has indicated that this provision constitutes a “cause or contribute” water quality-based effluent limitation (i.e., “C&C WQBEL”). EPA has further indicated that where downstream waters are impaired, compliance with this provision requires, inter alia, achieving the applicable water quality end-of-pipe.

Request

This request shall be limited to documents related specifically to the development of the New Hampshire Small MS4 General Permit. Documents sought are only those located at EPA Region I. This request seeks:

1. Any document explaining what effluent quality must be achieved to attain compliance with a C&C WQBEL.
2. Any documents explaining EPA’s rationale for interpreting CWA Section 402(p)(3)(B)(iii) to require such C&C WQBEL.
3. Any documents addressing the derivation of a C&C WQBEL for MS4 or non-MS4 NPDES permittees (e.g., what factors are considered in deriving such a WQBEL).
4. Any document explaining how and/or why a C&C WQBEL (i.e., end-of-pipe limitation ignoring dilution and fate and transport factors) is determined to be necessary to ensure downstream water quality standard compliance.

Please contact the undersigned if the associated search and duplication costs are anticipated to exceed \$100.00. If the requested documents are withheld based upon any asserted privilege, please identify the basis for the non-disclosure.

If you have any questions regarding this request, please do not hesitate to contact this office so as to ensure that only the necessary documents are duplicated.

Respectfully,

//s// Ben Kirby
Benjamin M. Kirby

² Available at <https://www3.epa.gov/region1/npdes/stormwater/nh/2017-response-to-comments-sms4-nh.pdf>